

Judge: Samuel J. Steiner
Chapter: 13
Hearing Date: September 29, 2010
Hearing Time: 9:30 a.m.
Hearing Location:
U.S. Bankruptcy Court
700 Stewart St #8206
Seattle, WA 98101
Response Date: September 22, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

ROSA MINISTERIO SARAUSAD ,
Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 10-18453-SJS

OBJECTION TO CONFIRMATION
AND MOTION TO DISMISS CASE

K. Michael Fitzgerald, Chapter 13 Trustee, objects to confirmation of the debtor's plan and moves to dismiss the debtor's Chapter 13 case. In support of his Motion, the Trustee states as follows:

On July 22, 2010, the debtor filed a petition for relief under Chapter 13 of the U.S. Bankruptcy Code. A debtor is required to provide copies of payment advices or other evidence of payment, a copy of the debtor's most recently filed federal income tax return, and a complete Chapter 13 Trustee Information Sheet (Local Bankruptcy Form 13-2, 521; Interim Fed. R. Bankr. P. 4002(b); Local R. Bankr. P. 4002-1; Local R. Bankr. P. 3015-1(e). If a debtor fails to provide the most recently filed federal income tax return not later than seven days before the date first set for meeting of creditors, the debtor's case must be dismissed unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor. 11 U.S.C. § 521(e)(2).

The debtor's meeting of creditors is scheduled for August 30, 2010, yet the debtor has failed to provide the Trustee the debtor's proof of income, most recently filed federal tax return,

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Chapter 13 Trustee
600 University St. #2200
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1 and Information Sheet. Based on the debtor's failure to provide this documentation, the Trustee
2 requests that the debtor's case be dismissed.

3 Furthermore, the debtor's plan is not feasible. The plan proposes payments of \$3,020.38
4 per month, and provides for cure of residence property deed of trust arrears to IndyMac
5 Mortgage Services ("IndyMac") in the scheduled amount of \$26,000.00. The ongoing deed of
6 trust installments to IndyMac are provided for in section VII.B as direct payments to be made by
7 the debtor, but in the amount of "0" per month. The plan is defective and improperly lists the
8 second position deed of trust with Key Bank in section IV.C.4.b as a non-910 debt secured by
9 personal property. The plan puts the value of Key Bank's claim at "0" and proposes equal
10 periodic payments of "0." The plan fails to disclose any intent to avoid Key Bank's lien by way
11 of an adversary complaint.

12 The debtor's schedules appear incomplete as well. Schedule J includes \$65.00 per month
13 for payment on a student loan, but no loan is listed on Schedule F or on the matrix. The
14 Statement of Financial Affairs refers to a judgment the debtor has against the Department of
15 Labor and Industries, but Schedule B fails to disclose this asset.

16 Finally, only an individual with regular income may be a debtor under Chapter 13. 11
17 U.S. §109(e). An individual with regular income means an individual whose income is
18 sufficiently stable and regular to enable that individual to make payments under a Chapter 13
19 plan. 11 U.S.C. § 101(30). Debtor's Schedule I (Current Income) reflects monthly income of
20 \$2,700.00, some \$300.00 per month less than the proposed plan payment, while Schedule J
21 (Current Expenditures) reflects negative monthly income of \$2,134.38. The debtor does not
22 have income to fund a plan. Because the debtor does not have regular and stable income, she is
23 not eligible for relief under chapter 13.

24 The Trustee reserves the right to assert additional bases for his Motion.

25 A proposed Order on this Motion is attached and incorporated.

26 WHEREFORE, the Chapter 13 Trustee requests that the Court enter an Order denying
27
28

1 confirmation of the plan and dismissing the debtor's Chapter 13 case.

2 Dated this 25th day of August, 2010

3 /s/ Jason Wilson-Aguilar, WSBA #33582 for

4 K. MICHAEL FITZGERALD
Chapter 13 Trustee

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